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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

John F. Sturm
Senior Vice President
Government, Legal and Public Policy

January 4, 1993

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Reference: CC Docket No. 92-90

Dear Ms. Searcy:

The Newspaper Association of America (NAA)¹ respectfully submits these comments in support of the Direct Marketing Association's (DMA) petition for reconsideration and clarification filed with the Commission in the matter of the Telephone Consumer Protection Act of 1991 (CC Docket No. 92-90). Specifically, NAA supports clarification of provisions relating to the retention of do-not-call lists, disclosure requirements and time of day restrictions.

In addition, NAA wishes to notify the Commission that several of its member newspapers have informed us that they are experiencing serious difficulties in attempting to gain access to certain telephone numbers that have been ruled off-limits to autodialers under the Commission's regulations. It appears that many law enforcement agencies and private institutions such as hospitals are unwilling to provide lists of telephone numbers that would allow newspapers, and presumably others, to comply with the Commission's rules.

Since these new rules were scheduled to become effective on December 20, 1992, and some uncertainty was created by the actions of the United States District Court for the District of Oregon (Civil No. 92-1408-AS), we have not received sufficient information from our members to assess how widespread this problem is in actuality. If the problem is

¹ The Newspaper Association of America, formerly the American Newspaper Publishers Association, represents more than 1,500 U.S. newspapers that account for more than 90 percent of the country's daily newspaper circulation.

indeed widespread, we will provide the Commission with additional information to form the proper factual basis upon which it may review this provision of the rules.

Retention of Do-Not-Call Lists

NAA believes that the Commission's rules requiring the maintenance of do-not-call lists on a permanent basis is clearly the most serious flaw in the Commission's commendable effort to balance the legitimate privacy interests of consumers against the legitimate commercial interests of telemarketers. Thus, NAA strongly urges the Commission to reconsider this aspect of its rules.

In today's rapidly expanding market, telephone numbers are constantly changing and numbers reassigned because of moves, deaths, etc.² Indeed it is a well-publicized fact that the local telephone companies are under enormous pressure to reassign "used numbers" as quickly as possible because of the general shortage of numbers caused by a population that is exploiting new forms of telephony such as cellular phones and facsimile (fax) devices, to name a couple. As we have noted in our earlier filings in this proceeding, the lifeblood of newspaper circulation is telephone solicitations. Newspapers on average derive 50 percent of their new subscribers from telemarketing. To deny newspapers and others the opportunity to contact potential subscribers because wholly outdated -- and now reassigned -- telephone numbers are required to be retained in permanent do-not-call lists poses a serious economic threat and ignores the reality of a world of constantly-changing telephone numbers.

Moreover, there is an unfortunate "flip-side" to this rule. Newcomers to a community who have been assigned a telephone number that appears on a now-outdated do-not-call list (because it was previously assigned to another telephone subscriber) would be unnecessarily excluded from the newspaper's calling list, even though the new resident may well desire to have as much access to new, local sources of information as possible. We see no public interest value whatsoever in this result.

Accordingly, we strongly urge the Commission to reconsider this rule. We suggest that the Commission adopt a rule that allows telemarketers to review their calling lists on a periodic basis of every 24-36 months.³

² In its Report and Order adopted September 17, 1992, the Commission cited comments filed by AT&T which state that nearly one-fifth of all telephone numbers change each year (R&O, paragraph 12).

³ Also with respect to the do-not call list, some newspapers are encountering protests from telephone subscribers who do not wish to give their name to be placed on a do-not-call list along with a phone number, as required in § 64.1200 (e)(2)(iii). We understand that there are legitimate privacy concerns by telephone subscribers. However, newspapers cannot fully comply with all the requirements of the

Disclosure Requirements

NAA fully supports DMA's contention that, where live operators are making solicitations, telemarketers should be required to supply their telephone number or address -- but only upon request by the called party. Where NAA member newspaper telemarketing operations employ live operators, the name of the individual caller and the newspaper is always provided to the called party. We believe that requiring the calling party to provide a phone number or address is an unneeded use of the called party's time, since accessing the newspaper is not a difficult task. Moreover, even where the calling party may be less familiar, it is much more efficient for both parties to provide the information only if requested.

Time of Day Restrictions

We believe the Commission's decision to restrict telemarketing calls to between 8:00 am and 9:00 pm local time makes good sense and amounts to a sound business practice for any telemarketer. Nonetheless, it also makes good sense for the Commission to provide an exception to this rule where there is prior express consent by the called party. Working hours of two-worker families, for example, may make it convenient for someone to take calls after 9:00 pm -- but only after the called party expressly invites such a call.

NAA supports DMA's arguments in support of a limited exception of this nature.

Access to Emergency Telephone Numbers

As noted before, several NAA member newspapers have expressed concern about gaining access to specific telephone numbers that are off-limits to autodialers and prerecorded voice messages, i.e., emergency, medical, cellular, etc. phone numbers as required in § 64.1200 (a)(1) of the Commission's regulations.

Many newspapers utilize automatic dialing systems to generate telemarketing calls, although live operators are used to market newspaper products (a few newspapers use prerecorded messages for debt collection purposes). We understand that some member newspapers have experienced great difficulty in obtaining off-limits phone numbers from their local phone company as well as hospitals or police forces they have contacted directly.

Commission's regulations, unless both name and number are placed on the do-not-call list. NAA requests the Commission to make explicit that if a telephone subscriber who has asked to be placed on a do-not-call list refuses to provide his/her name, the telemarketer need only record the telephone number with a notation on the refusal to provide a name in order to be in reasonable compliance with this provision.

Newspapers very much want to comply with the provisions of the Telephone Consumer Protection Act. NAA would like to bring these difficulties to the Commission's attention and ask for guidance in helping its member newspapers comply with this provision of the TCPA, given the aforementioned obstacles.

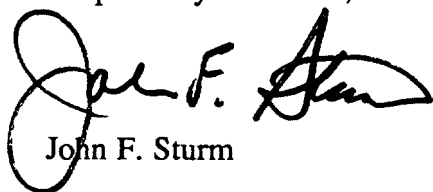
Summary

In sum, NAA urges the Commission to fine-tune its rules as follows:

1. The permanency of maintaining a do-not-call list should be revised to allow telemarketers to review their lists every 24-36 months.
2. In the case of live operator solicitations, the telephone number or address of the telemarketer should be furnished only upon request by the called party.
3. With respect to time of day restrictions, an exception should be allowed with the prior express consent of the called party.
4. As noted before, if we are able to bring additional information to the attention of the Commission with regard to the impossibility of complying with the emergency number provision of the rules, we will do so in reply comments in order to provide a record upon which the Commission can provide guidance to NAA member newspapers.

Although the newspaper industry has had many of the safeguards contained in the Commission's rules in place for some time -- because our members have found that it is good business to do so -- the industry desires to comply fully with the Commission's new rules. We urge that these rules be modified to the limited extent noted above to make compliance more realistic and practical.

Respectfully submitted,



John F. Sturm

cc (by mail) : The Honorable Alfred C. Sikes The Honorable Andrew C. Barrett
 The Honorable Ervin S. Duggan The Honorable Sherrie P. Marshall
 The Honorable James H. Quello Cheryl Tritt, Chief, Common Carrier Bureau
 Abraham Leib, Domestic Services Bureau Chief